

In re Pollitzer
11-16703-BKC-LMI

The issue before the Court was whether a case converted to chapter 7 from another chapter can be dismissed for abuse under 11 U.S.C. §707(b)(1), which states that “[a]fter notice and a hearing, the court . . . may dismiss a case filed by an individual debtor under this chapter. . . .” The Debtor’s chapter 13 case was converted to chapter 7. The U.S. Trustee sought to dismiss the Debtor’s case pursuant to 11 U.S.C. §707(b)(1), claiming that the Debtor’s case is an abuse under the totality of the circumstances under §707(b)(3)(A) because the Debtor’s disposable income appeared more than sufficient to pay the unsecured creditors. The Debtor argued that 11 U.S.C. §707(b)(1) does not apply to cases converted to chapter 7 but only to cases originally filed as a chapter 7. The Court adopted the reasoning and holding of Judge Barrett in *In re Davis*, 489 B.R. 478 (Bankr. S.D. Ga. 2013) and held that 11 U.S.C. §707(b)(1) does apply in a converted case.